

July 27, 2015

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **July 27, 2015**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP2680-CR	<u>State v. Patrick J. Lynch</u> Do defendants have a constitutional right to disclosure of privately held privileged records? If they do, what is the basis for the constitutional right? After determining that a defendant had made the showing required by <u>State v. Shiffra</u> , 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993) and <u>State v. Green</u> , 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, could the circuit court have invoked Wis. Stat. § 146.82(2)(a)4. to obtain a witness/victim's medical records without consent? Assuming a circuit court cannot obtain a witness/victim's privileged records without consent pursuant to § 146.82(2)(a)4., is witness preclusion always required when a defendant satisfies <u>Shiffra/Green</u> but the witness/victim withholds consent to an in camera review of privileged records?	03/16/2015 REVW Oral Arg 10/12/2015	4 Dodge	01/28/2015 Pub. 2015 WI App 2 ___ Wis. 2d ___ 859 N.W.2d 125
2012AP1493	<u>Donald Christ, et al. v. Exxon Mobil Corporation, et al.</u> Was there a violation of defendants' right to equal protection and due process by summarily reversing the circuit court's decision dismissing plaintiffs' claims? Does Wis. Stat. § 893.54(1) extinguish non-medical malpractice survival actions commenced by special administrators more than three years after the date of the decedent's death? Does § 893.54(2) extinguish non-medical malpractice wrongful death actions commenced by beneficiaries more than three years after the date of the decedent's death? When applying the discovery rule to survival and wrongful death claims, may a court look to a beneficiary's or special administrator's knowledge to determine when an injury to the decedent was discovered?	10/06/2014 REVW Affirmed 06/23/2015 2015 WI 58	3 Eau Claire	--
2012AP2520	<u>Hoffer Properties, LLC v. State of Wisconsin, DOT</u> What is the standard as to when the government must pay compensation when it eliminates an abutting landowner's right of direct access (by a driveway or the right to apply for a driveway permit) to a controlled-access highway?	02/10/2015 REVW Oral Arg 09/08/2015	4 Jefferson	Unpub.

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2012AP2782-CR	<u>State v. Andre M. Chamblis</u> Where a defendant seeks to plead guilty or no contest to a charge of operating a motor vehicle while under the influence of an intoxicant (OWI), or with a prohibited alcohol concentration (PAC), does <u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) and due process principles require that the number of prior offenses that count for sentence enhancement be determined prior to entry of the defendant's plea? Is a court of appeals' decision ordering remand to the circuit court with instructions to: (1) issue an amended judgment of conviction reflecting a conviction for operating with a PAC, as a seventh offense, and (2) hold a resentencing hearing, and impose a sentence consistent with the penalty ranges for a seventh offense, constitutionally permissible under <u>Bangert</u> and due process principles where the defendant specifically entered a plea of guilty to PAC as a sixth offense, where the circuit court sentenced the defendant in accordance to proper penalties for PAC as a sixth offense, and where the defendant has already served the confinement portion of such sentence?	11/18/2014 REVW Reversed 06/12/2015 2015 WI 53	4 La Crosse	Unpub.
2013AP127-CR	<u>State v. Raheem Moore</u> Did a law enforcement officer's decision to turn off a recorder violate the mandate of <u>State v. Jerrell C.J.</u> , 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 and Wis. Stat. § 938.195, thus requiring suppression of a juvenile's unrecorded statement and his subsequent recorded statement? Was the defendant's inculpatory statement made voluntarily?	05/22/2014 REVW Affirmed 06/16/2015 2015 WI 54	1 Milwaukee	02/26/2014 Pub. 2014 WI App 19 352 Wis. 2d 675 846 N.W.2d 18
2013AP197-CR	<u>State v. Jesse L. Herrmann</u> Whether, when sentencing a defendant for homicide and injury by intoxicated use of a vehicle, a sentencing judge's remarks, which spoke of losing a sister to a drunk driver in 1976, were an abuse of discretion and a violation of due process by demonstrating an appearance of bias.	09/24/2014 REVW Affirmed 07/15/2015 2015 WI 84	4 La Crosse	Unpub.

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*2013AP416	<u>Peggy Z. Coyne, et al. v. Scott Walker, et al.</u> Does the legislative authority delegated under Act 21 fall within the executive power conferred upon the Superintendent in Wis. Const. art. X, § 1 for the “supervision” of public instruction? Alternatively, without regard to the distinction between legislative and executive power, does Act 21 impermissibly infringe on the Superintendent’s power where Wis. Const. art. X, § 1 expressly authorizes the Legislature to appoint other officers and to prescribe all of the powers and duties related to public instruction, and where Act 21’s effect on rulemaking does not unduly burden or substantially interfere with the Superintendent’s role in the supervision of public instruction? Was the circuit court’s order overly broad in holding that Act 21’s provisions could never be lawfully applied to any proposed rule of the Superintendent, without regard to that rule’s connection with the Superintendent’s authority to supervise public instruction?	06/12/2015 REVW Oral Arg 10/12/2015	4 Dane	03/25/2015 Pub. 2015 WI App 21 361 Wis. 2d 225 862 N.W.2d 606
2013AP430-CR	<u>State v. Patrick I. Hogan</u> When a person is detained by law enforcement officers for a period of time and then verbally released by the officers for a comparatively brief period of time before being re-approached by the officer(s), when is the time of the officers’ disengagement of the person regarded as a brief interruption of the detention and when should disengagement be regarded as the end of one stop and the start of a second stop?	11/13/2014 REVW Affirmed 07/10/2015 2015 WI	4 Grant	Unpub.
2013AP557-CR	<u>State v. Corey R. Kucharski</u> In granting a defendant a new trial on the issue of mental responsibility under the miscarriage-of-justice prong of Wis. Stat. § 752.35, did the decision conflict with <u>State v. Sarinske</u> , 91 Wis. 2d 14, 280 N.W.2d 725 (1979)?	09/24/2014 REVW Reversed and remanded 07/07/2015 2015 WI 64	1 Milwaukee	Unpub.
2013AP613 (consolidated with 2013AP687)	<u>Wisconsin Pharmacal Company, LLC v. Nebraska Cultures of California, Inc.</u> Is the supply of an ingredient that causes a recall of a product incorporating the contractually nonconforming ingredient a claim for “property damage”? Does an action that alleges contract-based claims seeking economic damages as a result of a contractually nonconforming goods constitute an “occurrence”? Does the Business Risk exclusion apply to negate coverage?	04/17/2015 REVW Oral Arg 09/22/2015	2 Ozaukee	11/18/2014 Pub. 2014 WI App 111 358 Wis. 2d 673 856 N.W.2d 505

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2013AP857-CR	<u>State v. Brett W. Dumstrey</u> Is a locked, private, underground parking garage, located underneath an apartment building in which a defendant is a tenant, an area protected by the Fourth Amendment of the United States Constitution, such that probable cause to arrest for a crime and exigent circumstances were required for a police officer to conduct a warrantless entry?	03/16/2015 REVW Oral Arg 09/17/2015	2 Waukesha	01/28/2015 Pub. 2015 WI App 5 ____ Wis. 2d ____ 859 N.W.2d 138
2013AP907	<u>Kenneth C. Burgraff, Sr. v. Menard, Inc.</u> Did an insurance company's duty to defend an insured terminate after the company settled with a plaintiff for less than the insurance company's liability limit?	02/10/2015 REVW Oral Arg 09/17/2015	3 Eau Claire	08/27/2014 Pub. 2014 WI App 85 356 Wis. 2d 282 853 N.W.2d 574
2013AP1023	<u>Adam R. Mayhugh v. State of Wisconsin</u> Does Wis. Stat. § 301.04 ("The department may sue and be sued.") waive the Department of Corrections' sovereign immunity? If not, what is the meaning of the language, "sue or be sued"?	11/13/2014 REVW Affirmed 07/10/2015 2015 WI	4 Waushara	--
2013AP1108-CR	<u>State v. Jesse J. Delebreau</u> Once trial counsel has been appointed for a criminal defendant, if the defendant requests a custodial interview with law enforcement, is it a violation of that defendant's Sixth Amendment right to counsel for law enforcement to take a statement from the defendant, without the defendant's appointed attorney being present, if the officer provides the usual <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) warnings before taking the statement? Is it a violation of the defendant's Article I, Section 7 of the Wisconsin Constitution's right to counsel?	05/22/2014 REVW Affirmed 06/16/2015 2015 WI 55	3 Brown	02/26/2014 Pub. 2014 WI App 21 352 Wis. 2d 647 843 N.W.2d 441

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*2013AP1228-CR	<u>State v. Jimmie Lee Smith</u> Did the court of appeals exceed its constitutional authority by engaging in fact finding? Did the court of appeals impermissibly weigh the evidence rather than defer to the circuit court? Did the circuit court erroneously exercise its discretion concerning a defendant's mental capacity?	06/12/2015 REVV Oral Arg 10/06/2015	1 Milwaukee	10/29/2014 Pub. 2014 WI App 98 357 Wis. 2d 582 855 N.W.2d 422
2013AP1345-CR	<u>State v. Andrew M. Obrecht</u> Must sentence credit for pretrial incarceration granted by a court be used to reduce a revoked parolee's period of incarceration, rather than the remaining parole period after the completion of the incarceration? (See Wis. Stat. § 302.11 (7))	11/14/2014 REVV Reversed 07/07/2015 2015 WI 66	4 Dane	04/30/2014 Pub. 2014 WI App 42 353 Wis. 2d 542 846 N.W. 2d 479
2013AP1407	<u>Wisconsin Realtors Association, et al. v. Public Service Commission of Wisconsin</u> When promulgating an administrative rule, must the promulgating agency request the preparation of a housing impact report pursuant to Wis. Stat. § 227.115, whenever the subject matter of a proposed rule relates to housing or because the rule could reasonably affect housing? When promulgating a rule, can an agency conclude that it is not obligated to request the preparation of a housing impact report by the (then) Department of Commerce (currently the Department of Administration), pursuant to the provisions of Wis. Stat. § 227.115, if it concludes that that impact of that rule will be acceptable? Does the court of appeals' decision effectively relieve administrative agencies of the obligation to comply with the rule-making procedures of Wis. Stat. § 227.115?	10/07/2014 REVV Affirmed 06/30/2015 2015 WI 63	3 Brown	Unpub.
2013AP1437-CR	<u>State v. Hatem M. Shata</u> Was trial counsel's advise to a defendant that he faced a "strong chance" of deportation based on a plea to a felony charge constitute deficient performance under <u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010)? Did a defendant establish prejudice under <u>Padilla</u> and <u>State v. Mendez</u> , 2014 WI App 57, 354 Wis. 2d 88, 847 N.W.2d 895 by showing that, had he been fully informed of the deportation consequences of his plea, it would have been rational to reject the plea and proceed to trial?	12/15/2014 REVV Reversed 07/09/2015 2015 WI	1 Milwaukee	Unpub.

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*2013AP1488	<u>State of Wisconsin Department of Justice v. State of Wisconsin Department of Workforce Development</u> Does Wis. Stat. § 230.80(5)'s protections for employees who disclose information gained by the employee which the employee reasonably believes demonstrates: (a) A violation of any state or federal law, rule or regulation, and (b) Mismanagement or abuse of authority in state or local government apply in this case? Does the Wisconsin Whistleblower Protection Act protect the employee in this case from retaliation under circumstances where the employer believed the employee made a protected disclosure under the statute?	06/12/2015 REVW Oral Arg 10/05/2015	4 Dane	03/25/2015 Pub. 2015 WI App 22 361 Wis. 2d 196 861 N.W.2d 789
2013AP1532	<u>Ash Park, LLC v. Alexander & Bishop, Ltd.</u> Is a vacant land offer to purchase an "enforceable contract" so as to require a seller to pay a commission under a real estate listing contract when the seller obtained a judicial order for specific performance, but the buyer lacked the funds to purchase and could not be compelled to honor that order?	11/19/2014 REVW Affirmed 07/07/2015 2015 WI 65	3 Brown	08/27/2014 Pub. 2014 WI App 87 356 Wis. 2d 249 853 N.W.2d 618
2013AP1581-CR	<u>State v. Richard E. Houghton, Jr.</u> Does Wis. Stat. § 346.88 (3) (b) prohibit any obstruction to the driver's clear view through the front windshield, or does it prohibit only obstructions that materially interfere with the driver's view through the front windshield? May an officer stop a vehicle when the officer does not have probable cause, but does have reasonable suspicion, that the operator is violating a traffic law such as Wis. Stat. § 346.88 (3) (b)? Is the holding of <u>State v. Longcore</u> , 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), aff'd by an equally divided court, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620 (per curiam), that a valid traffic stop cannot be based on a mistake of law inconsistent with the U.S. Supreme Court's Fourth Amendment interpretation in <u>Heien v. North Carolina</u> , No. 13-604?	01/13/2015 REVW Reversed 07/14/2015 2015 WI 79	2 Walworth	Unpub.

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2013AP1715	<p><u>The Journal Times v. City of Racine Board of Police and Fire Commissioners</u></p> <p>Does <u>Newspapers, Inc. v. Breier</u>, 89 Wis. 2d 417, 279 N.W.2d 179 (1979) preclude a custodian from asserting a statutory exception in its initial denial of production of records? (See Wis. Stat. §§ 19.21, et seq., “Open Records Law”)</p> <p>Does equitable estoppel allow a requester to recover under the public records law based on the custodian’s failure to assert the correct exception in its initial denial?</p> <p>May a requester use a mandamus action under the public records law to enforce an alleged violation of the open meetings law?</p> <p>Does the custodian’s obligation “to provide sufficient notice of the basis for the denial to enable [the requester] to choose a course of action,” <u>Mayfair Chrysler-Plymouth, Inc. v. Baldarotta</u>, 162 Wis. 2d 142, 162, 469 N.W.2d 638 (1991), apply to all requests under the Open Records Law?</p> <p>When a records custodian abandons its stated reason for denial and attempts to defend against a mandamus action on other grounds, is the party challenging the denial entitled to an award of attorney fees, as a matter of law, for having prevailed “in substantial part”?</p>	<p>11/14/2014 REVW Reversed 06/18/2015 2015 WI 56</p>	<p>2 Racine</p>	<p>06/25/2014 Pub. 2014 WI App 67 354 Wis. 2d 591 849 N.W.2d 888</p>
2013AP1750	<p><u>Ronald J. Dakter v. Dale L. Cavallino</u></p> <p>Does the “superior skills” doctrine apply in a motor vehicle negligence action, such that a commercial truck driver is held to a higher standard of conduct than an ordinary automobile operator?</p> <p>Was the use of “professional negligence” language in the jury instructions improper? See <u>Saxby v. Cadigen</u>, 226 Wis. 391, 396 – 7, 63 N.W.2d 820 (1954).</p>	<p>01/12/2015 REVW Affirmed 07/07/2015 2015 WI 67</p>	<p>4 Juneau</p>	<p>11/18/2014 Pub. 2014 WI App 112 358 Wis. 2d 434 856 N.W.2d 523</p>
2013AP1753-CR/ 2013AP1754-CR	<p><u>State v. Rogelio Guarnero</u></p> <p>Whether the circuit court improperly used a prior federal guilty plea and conviction under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-68, to count as a prior offense in a defendant’s state felony case. (See Wis. Stat. § 961.41 (3g) ©).</p>	<p>11/14/2014 REVW Affirmed 07/09/2015 2015 WI</p>	<p>1 Milwaukee</p>	<p>05/28/2014 Pub. 2014 WI App 56 354 Wis. 2d 307 848 N.W.2d 329</p>
2013AP2323	<p><u>Robert Johnson v. Cintas Corporation No. 2</u></p> <p>Is a party entitled to interest under Wis. Stat. § 807.01(4) at the rate in effect at the time judgment is entered as provided by statute or at the rate in effect when an offer of settlement was made?</p>	<p>04/16/2015 REVW Voluntary dismissal 06/22/2015</p>	<p>2 Kenosha</p>	<p>02/25/2015 Pub. 2015 WI App 14 360 Wis. 2d 350 860 N.W.2d 515</p>

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2013AP2433-CR	<u>State v. Stephen LeMere</u> Does defense counsel have an obligation to advise a defendant prior to entry of a guilty plea that the plea might ultimately lead to a lifetime commitment as a sexually violent person under Wis. Stat. ch. 980?	03/16/2015 REVW Oral Arg 09/17/2015	3 Eau Claire	--
2013AP2435-CR	<u>State v. Fernando Ortiz-Mondragon</u> Does <u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010) require counsel to conduct research and investigation to determine whether a particular crime falls into a broader category of crimes for which the immigration consequences are clear? Does a signed Plea Questionnaire form, on its own, affirmatively demonstrate that counsel adequately advised his client of deportation consequences?	12/18/2014 REVW Affirmed 07/09/2015 2015 WI	3 Brown	11/18/2014 Pub. 2014 WI App 114 358 Wis. 2d 423 856 N.W.2d 339
2014AP108-CR	<u>State v. Charles V. Matalonis</u> Under the community caretaker doctrine, did law officers act reasonably when, while lawfully inside a suspect's home, they conducted a warrantless search behind a locked door that had blood on it because of their belief that additional persons may have been injured during a battery that had occurred inside the home? Alternatively, under the protective sweep doctrine, did officers have a reasonable and articulable suspicion that justified their warrantless sweep of a locked room inside a suspect's' home for people who may have posed a danger to them as they investigated a battery that occurred inside the home?	04/17/2015 REVW Oral Arg 09/18/2015	2 Kenosha	Unpub.
2014AP515-FT	<u>State v. Daniel S. Iverson</u> May a law enforcement officer conduct a traffic stop when the officer has either a reasonable suspicion or probable cause to believe that a vehicle's occupant has violated a non-traffic forfeiture offense?	03/16/2015 REVW Oral Arg 09/08/2015	4 La Crosse	Unpub.
2014AP678/ 2014AP679/ 2014AP680	<u>State v. Melisa Valadez</u> How definite or imminent must deportation be in order for it to be "likely," such that a defendant may withdraw a guilty or no contest plea on the basis that he or she was not informed of the immigration consequences at the plea colloquy? If, in order to withdraw the plea, the defendant must show that deportation proceedings are underway, how does this standard fit in with the time limits for a motion to withdraw the plea?	03/16/2015 CERT Oral Arg 10/06/2015	2 Walworth	--

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2014AP1048	<u>Winnebago County v. Christopher S.</u> Whether Wis. Stat. § 51.20(1)(ar) is facially unconstitutional on substantive due process grounds because it does not require that a court find an inmate dangerous prior to ordering the inmate civilly committed for treatment and authorizing the involuntary medication of the inmate.	05/12/2015 CERT Oral Arg 09/18/2015	2 Winnebago	--
2014AP1099-CR	<u>State v. Maltese Lavele Williams</u> Whether a sufficiency of the evidence challenge requires measuring the evidence against the instructions the jury actually received, as happened in <u>State v. Wulff</u> , 207 Wis. 2d 143, 557 N.W.2d 813 (1997), or against the statutory requirements, as happened in <u>State v. Beamon</u> , 2013 WI 47, 347 Wis. 2d 559, 830 N.W.2d 681.	12/18/2014 CERT Affirmed 07/10/2015 2015 WI	1 Milwaukee	--
*2014AP1267-CR	<u>State v. Andy J. Parisi</u> Whether the good faith exception to the exclusionary rule also applies when police seize blood for the purpose of testing it for the presence of drugs.	06/12/2015 REVW Oral Arg 10/05/2015	2 Winnebago	Unpub.
*2014AP1283	<u>S. A. M., et al. v. Nancy M. Meister</u> Whether the grandparent visitation statute (Wis. Stat. § 767.43 (1)) requires a grandmother to show she has a relationship with her grandchildren similar to a parent-child relationship before the court can grant the grandmother visitation rights.	06/12/2015 REVW Oral Arg 10/06/2015	4 Jefferson	Unpub.
2014AP1880	<u>United Food v. Hormel Foods Corporation</u> Is the donning and doffing of clothing that is required by the employer, occurs on the employer's premises, and benefits the employer "integral" and "indispensable" to the principal work activities of the employees—and therefore compensable under Chapters 103 and 109 of the Wisconsin Statutes and Wis. Admin. Code § DWD 272.12 (Feb. 2009)—even if the employees' tasks could be performed without the required clothing and equipment? Even if donning and doffing required work clothing and equipment is deemed "integral" and "indispensable" to the employees' work activities, is it nonetheless rendered non-compensable by the doctrine of <u>de minimus non curat lex</u> ?	05/12/2015 CERT Oral Arg 10/05/2015	4 Rock	--

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2014AP1938	<u>New Richmond News v. City of New Richmond</u> May law enforcement redact "personal information" or "highly restricted personal information" from motor vehicle records in response to a public records request where the requester does not specify an applicable exception to access under the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721(a)? Must a municipality redact personal information from law enforcement reports under the federal Driver's Privacy Protection Act, based upon federal preemption? <u>See</u> Wis. Stat. Sec. 19.36(1)(Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35(1)")	04/17/2015 BYPA Oral Arg 09/18/2015	3 St. Croix	--
2014AP2431	<u>St. Croix County Department of Health and Human Services v. Michael D.</u> Is a CHIPS based TPR action barred if the last out-of-home placement order does not comply with the written notice provisions of Wis. Stat. § 48.356?	04/16/2015 REVW Oral Arg 09/08/2015	3 St. Croix	Unpub.

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